

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

MICHAEL J. WILSON-BEY,

Petitioner,

v.

**CIVIL ACTION NO. 2:11-CV-59
(BAILEY)**

**TERRY O'BRIEN,
Warden USP Hazelton,**

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge David J. Joel [Doc. 21]. By Standing Order, entered on March 24, 2000, this action was referred to Magistrate Judge Joel for submission of a proposed report and recommendation ("R&R"). Upon his initial review, Magistrate Judge Joel filed his R&R on February 27, 2012. In that filing, the magistrate judge recommends that this Court grant respondent Terry O'Brien's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Doc. 15] and deny and dismiss with prejudice petitioner Michael J. Wilson-Bey's § 2241 petition [Doc. 1].

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140,

150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Joel's R&R were due by April 5, 2012. To date, no objections have been filed. Accordingly, this Court will review the R&R for clear error.

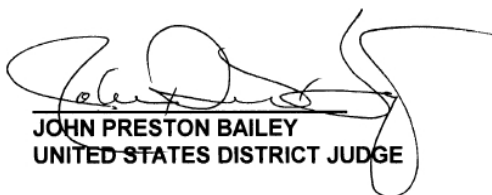
Upon careful review of the record, it is the opinion of this Court that the magistrate judge's Report and Recommendation **[Doc. 21]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated therein. Accordingly, O'Brien's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment **[Doc. 15]** is hereby **GRANTED** and Wilson-Bey's § 2241 petition **[Doc. 1]** is hereby **DENIED** and **DISMISSED WITH PREJUDICE**. This Court **DIRECTS** the Clerk to enter judgment in favor of the respondents and strike this case from the active docket of this Court.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** a certificate of appealability, finding that Wilson-Bey has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a copy to the *pro se* petitioner.

DATED: April 10, 2012.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE